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IN THE
COURT OF APPEALS OF INDIANA

KYLE A. AUBUCHON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 89A01-0710-CR-466
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Gregory A. Horn, Judge
Cause No. 89D02-0612-FD-179

May 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Kyle A. Aubuchon was convicted of auto theft[1] as a Class D felony after a jury trial. He appeals , raising one issue, which we restate as whether sufficient evidence was presented to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On the night of September 22, 2006, Tiffany White picked up Aubuchon, Carla Smith, James Napier, Jesse Glisson, and Nicholas Owens, and the group drove around Richmond in White's car. At some point, they drove to the Wal-Mart parking lot. There was a tent sale for automobiles set up in the parking lot; however, neither the store nor the tent sale was open for business at that time of night. Aubuchon and Owens approached a car, and after discovering it was unlocked, Aubuchon got into the driver's seat and started the car. Owens got into the front, passenger seat. White tried to stop Aubuchon, but he told her to move. Aubuchon then drove the car out of the parking lot with Owens as his passenger. White followed with Smith, Napier, and Glisson in her car.

At some point, Napier and Glisson got into the car taken from the parking lot, and Owens got into White's car. Aubuchon, who had been drinking, drove the car through a cornfield and, and when he tried to drive out of the cornfield, he got the car stuck in a ditch. White, Smith, and Owens left in White's car because Owens wanted to go home, but they later returned and saw that the stolen car was on fire. They picked up Aubuchon and Glisson and looked for Napier, but were unable to locate him.

[1] *See* IC 35-43-4-2.5(b)(1).

After the car got stuck in the ditch, Napier walked away from the scene. When he was a distance away, he looked back and saw that the car was on fire. He returned to the car, but did not see Aubuchon and Glisson. Napier asked a couple who were driving down the road to call the police. When the police arrived, they discovered Napier at the scene of the burned car. Napier was arrested and eventually told the police what had happened. The police obtained a stolen vehicle report from Toyota of Richmond regarding the burned car and were able to match the vehicle identification number on the burned car to the vehicle identification number on the title.

The State charged Aubuchon with auto theft as a Class D felony. After a jury trial, he was found guilty as charged and was given a two-year sentence.[2] Aubuchon now appeals.

DISCUSSION AND DECISION

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Williams*, 873 N.E.2d at 147; *Robinson*, 835 N.E.2d at 523.

Aubuchon argues that the State did not present sufficient evidence to support his conviction for auto theft. He specifically contends there was no physical evidence presented

that he committed the crime and it was not shown that he had exclusive possession of the car during the time it was missing. In order to convict Aubuchon of auto theft, the State was required to prove that he knowingly or intentionally exerted unauthorized control over the motor vehicle of another person, with the intent to deprive the owner of the vehicle's value or use. IC 35-43-4-2.5(b)(1).

Here, the evidence presented at Aubuchon's jury trial showed that, on the night in question, he, White, Smith, Glisson, Napier, and Owens were all together in White's car driving around Richmond. They eventually ended up at the Wal-Mart, where a tent sale for automobiles had been set up in the parking lot. White, Smith, Glisson, and Napier all testified that they witnessed Aubuchon approach a car, open the door, and get into the driver's seat. *Tr*. at 108, 128, 149, 180-81. Aubuchon then drove the car out of the parking lot, and White followed him in her car. Later, Aubuchon drove the car through a cornfield and then got it stuck in a ditch. When he and Glisson could not get the car to move and it somehow caught fire, they abandoned it, and White picked them up in her car. We believe that this was sufficient evidence to show that Aubuchon knowingly or intentionally exerted unauthorized control over the vehicle with the intent to deprive the owner of the vehicle of its use or value and to support his conviction.

Aubuchon relies on *Shelby v. State*, 875 N.E.2d 381 (Ind. Ct. App. 2007), *trans. denied* and *Buntin v. State*, 838 N.E.2d 1187 (Ind. Ct. App. 2005) for his contention that he did not have exclusive possession of the car during the time that it was missing, and

[2] Glisson and Napier were also charged with Class D felony auto theft, and both pled guilty to the charge. An arrest warrant was sought for Owens, but the record does not disclose whether he has ever been

therefore, sufficient evidence did not exist to support his conviction. In *Shelby*, the vehicle in question had been stolen fifteen days before the defendant was found sitting in the vehicle in a parking lot where stolen vehicles were often parked. 875 N.E.2d at 382-83. When the defendant was arrested, no tools that could be used to start the car were found on his person. *Id*. at 383. This court found that because of the length of time since the vehicle had been stolen and because the State had not proven that the defendant had exclusive possession of the vehicle from the time that it was stolen, the State had not presented sufficient evidence to support the conviction. *Id*. at 386.

In *Buntin*, the defendant was found in possession of a stolen vehicle five days after it was reported as stolen. 838 N.E.2d at 1188-89. On appeal following a conviction for auto theft, this court found the record devoid of any evidence that the defendant was in exclusive possession of the vehicle from the time it was stolen to the time he was arrested and that the State has failed to present any other corroborating evidence that the defendant had stolen the vehicle. *Id*. at 1191. Therefore, this court concluded that insufficient evidence was presented to support the defendant's conviction and reversed the trial court's judgment. *Id*.

The present case is distinguishable from both *Shelby* and *Buntin* because in those cases there was no evidence that anyone had observed the defendants actually taking the vehicles from the area where the owners left them. The issue in both was whether the unexplained possession of a vehicle not recently stolen was sufficient to support a theft conviction. Here, four witnesses testified that they saw Aubuchon actually take the car by driving it out of the parking lot without authorization. This was direct evidence of theft.

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charged with the crime.

Based on the evidence presented, we conclude that a reasonable trier of fact could have found Aubuchon guilty of auto theft beyond a reasonable doubt.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.